

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ODIS MORAN, ) Case No. 08cv1569-JM (BLM)  
Petitioner, )  
v. )  
MIKE KNOWLES, Warden, ) ORDER GRANTING APPLICATION FOR  
Respondent. ) ENLARGEMENT OF TIME TO FILE  
 ) ANSWER OR MOTION TO DISMISS  
 ) [Doc. No. 7]  
 )  
 )

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On October 14, 2008, Respondent requested an enlargement of time to file an answer or a motion to dismiss. Doc. No. 7. In support, Respondent's attorney noted conflicting work obligations, and that he was still waiting for archive files from Petitioner's direct appeal. Respondent's request is **GRANTED** as follows.

1. If Respondent contends the Petition can be decided without the Court's reaching the merits of Petitioner's claims (e.g., because Respondent contends Petitioner has failed to exhaust any state remedies as to any ground for relief alleged in the Petition, or that the Petition is barred by the statute of limitations, or that the Petition is subject to dismissal under Rule 9 of the Rules Governing § 2254 Cases, or that all of the claims are procedurally defaulted, or that Petitioner is not in custody), Respondent shall file a motion to dismiss pursuant to Rule 4 of the Rules Governing § 2254 Cases no later than

1 November 13, 2008. The motion to dismiss shall not address the merits  
 2 of Petitioner's claims, but rather shall address all grounds upon which  
 3 Respondent contends dismissal without reaching the merits of  
 4 Petitioner's claims is warranted.<sup>1</sup> At the time the motion to dismiss  
 5 is filed, Respondent shall lodge with the Court all records bearing on  
 6 Respondent's contention in this regard. A hearing date is not required  
 7 for the motion to dismiss.

8 2. If Respondent files a motion to dismiss, Petitioner shall file  
 9 his opposition, if any, to the motion no later than December 4, 2008.  
 10 At the time the opposition is filed, Petitioner shall lodge with the  
 11 Court any records not lodged by Respondent which Petitioner believes may  
 12 be relevant to the Court's determination of the motion.

13 3. Unless the Court orders otherwise, Respondent shall not file  
 14 a reply to Petitioner's opposition to a motion to dismiss. If the  
 15 motion is denied, the Court will afford Respondent adequate time to  
 16 respond to Petitioner's claims on the merits.

17 4. If Respondent does not contend that the Petition can be  
 18 decided without the Court reaching the merits of Petitioner's claims,  
 19 Respondent shall file and serve an answer to the Petition, and a  
 20 memorandum of points and authorities in support of such answer, pursuant  
 21 to Rule 5 of the Rules Governing § 2254 Cases no later than December 1,  
 22 2008. At the time the answer is filed, Respondent shall lodge with the  
 23 Court all records bearing on the merits of Petitioner's claims. The  
 24 lodgments shall be accompanied by a notice of lodgment which shall be  
 25 captioned "Notice of Lodgment in 28 U.S.C. § 2254 Habeas Corpus Case -

26  
 27 <sup>1</sup> If Respondent contends Petitioner has failed to exhaust any state remedies  
 28 as to any ground for relief alleged in the Petition, the motion to dismiss shall also  
 specify the state remedies still available to Petitioner.

1       **To Be Sent to Clerk's Office.** Respondent shall not combine separate  
2 pleadings, orders or other items into a combined lodgment entry. Each  
3 item shall be numbered separately and sequentially.

4       5. Petitioner may file a traverse to matters raised in the answer  
5 no later than January 2, 2009. Any traverse by Petitioner (a) shall  
6 state whether Petitioner admits or denies each allegation of fact  
7 contained in the answer; (b) shall be limited to facts or arguments  
8 responsive to matters raised in the answer; and (c) shall not raise new  
9 grounds for relief that were not asserted in the Petition. Grounds for  
10 relief withheld until the traverse will not be considered. No traverse  
11 shall exceed ten (10) pages in length absent advance leave of Court for  
12 good cause shown.

13       6. A request by a party for an extension of time within which to  
14 file any of the pleadings required by this Order should be made in  
15 advance of the due date of the pleading, and the Court will grant such  
16 a request only upon a showing of good cause. Any such request shall be  
17 accompanied by a declaration under penalty of perjury explaining why an  
18 extension of time is necessary. If counsel for the Respondent already  
19 has requested and been granted an extension of time, any subsequent  
20 request must be authorized and signed by the Senior Assistant Attorney  
21 General or Chief Assistant Attorney General.

22       7. Unless otherwise ordered by the Court, this case shall be  
23 deemed submitted on the day following the date Petitioner's opposition  
24 to a motion to dismiss and/or his traverse is due.

25       8. Every document delivered to the Court must include a  
26 certificate of service attesting that a copy of such document was served  
27 on opposing counsel (or on the opposing party, if such party is not  
28 represented by counsel). Any document delivered to the Court without

1 a certificate of service will be returned to the submitting party and  
2 will be disregarded by the Court.

3 **IT IS SO ORDERED.**

4 DATED: October 15, 2008

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6 BARBARA L. MAJOR  
7 United States Magistrate Judge

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9 COPY TO:

10 HONORABLE JEFFREY T. MILLER  
11 U.S. DISTRICT JUDGE

12 ALL COUNSEL

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